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**DEPARTMENT OF STATE**

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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING NOTICE:	<b>BOARD OF DENTISTRY &amp; DENTAL HYGIENE</b>
DATE AND TIME:	<b>Thursday, May 31, 2012 at 3:00 p.m.</b>
PLACE:	<b>861 Silver Lake Boulevard, Dover, DE Cannon Building, Second-Floor Conference Room A</b>
APPROVED:	July 19, 2012

**MEMBERS PRESENT**

Blair Jones, DMD, Professional Member, President  
John Lenz, DDS, Professional Member, Secretary  
Neil McAneny, DDS, Professional Member  
Robert Director, DDS, Professional Member  
Joan Madden, RDH, Professional Hygiene Member  
Nathaniel Gibbs, Public Member (left at 5:11 p.m.)  
Cheryl Calicott-Trawick, Public Member  
Bernadette Evans, Public Member (arrived 3:12 p.m.)  
Debra Bruhl, RDH, Hygiene Advisory Member  
Buffy Parker, RDH, Hygiene Advisory Member

**MEMBERS ABSENT**

Thomas Cox, DDS, Professional Member  
Bonnie Thomas, RDH, Hygiene Advisory Member

**DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT**

Allison Reardon, Deputy Attorney General  
Pamela C. Zickafoose, Executive Director, Service Team A

**PUBLIC PRESENT**

Nicole Bishop  
Whitney Callaway  
Deborah Louie  
Brandy Galvan  
Kelly Green

**CALL TO ORDER**

Dr. Jones called the meeting to order at 3:00 pm.

**REVIEW AND APPROVAL OF MINUTES**

The Board reviewed the minutes of the May 11, 2012 Board meeting. Mr. Gibbs made a motion, seconded by Dr. McAneny, to approve the minutes of the Board meeting as presented. The motion carried unanimously.

The Board reviewed the minutes of the May 11, 2012 Exam Calibration Exercise. Dr. Director made a motion, seconded by Ms. Madden, to approve the minutes of the exercise as presented. The motion carried unanimously.

### **DENTAL & DENTAL HYGIENE CLINICAL EXAMS – SCORE REPORTING**

The examiners read aloud their scores of the dental and dental hygiene examinations. Dr. Zickafoose calculated an average score for each candidate and read the final score aloud along with the results of each candidate's jurisprudence examination, as applicable. The final dental exam results were as follows: 3 passed, 3 passed pending the jurisprudence exam, and 2 failed. One dental candidate who was registered for the exam did not show. The final dental hygiene exam results were as follows: 2 passed, 14 passed pending the jurisprudence exam, and 8 failed. Two dental hygiene candidates who were registered for the exam did not show.

Ms. Reardon congratulated those who passed the exam and explained that those who failed would receive a letter from the Division including the candidates' right to appeal.

### **UNFINISHED BUSINESS**

#### **RULES & REGULATIONS PUBLIC HEARING, JULY 19, 2012, 3:15 P.M.**

##### Regulation 4

Define Active Practice for Applicants Applying for Licensure as Dentists and Dental Hygienists by Reciprocity

##### Regulation 6

Clarify Acceptance of CE Courses Approved by PACE & CERP

Clarify Acceptance of CPR Courses Provided or Approved by Organizations Approved for CE  
Corrects References to Renewal Date, March 1<sup>st</sup> to May 31<sup>st</sup>

Ms. Reardon distributed copies of the proposed changes to the Board's Rules and Regulations for the Board's review and reported that a hearing has been scheduled during the Board's July 19<sup>th</sup> meeting in order to receive public comment.

### **STATUTORY CHANGES**

#### Practice Requirements for Dentists & Hygienists – Next Legislative Session

Ms. Reardon reminded the Board that the proposed statutory changes regarding practice requirements for dentists and dental hygienists will not be submitted until the next legislative session.

### **REQUESTS FOR CE EXCEPTIONS**

#### Lisa Applegate – Medical Exemption – Update from Ms. Reardon

#### Dr. Cynthia Minsk – Medical Exception – Update from Ms. Reardon

Ms. Reardon reported that letters were mailed to both Lisa Applegate and Dr. Cynthia Minsk after the March Board meeting requesting additional information to support their requests. To date, no response has been received from either of the licensees. After discussion, Ms. Madden made a motion, seconded by Dr. Director, to send a letter to Ms. Applegate notifying her that since she did not respond to the Board's request for additional information, that her request for a waiver of the continuing education requirement is denied. The motion carried unanimously. In the event that Ms. Applegate late-renews her license, she will automatically be audited for continuing education.

After further discussion, Dr. Director made a motion, seconded by Dr. McAneny, to deny Dr. Minsk's request for an exception to the continuing education requirement since she did not respond to the Board's request for additional documentation. The Board proposed to suspend or revoke the licensure of Dr. Minsk because she did not satisfy the continuing education requirement and the Board did not grant her request for an exception to the requirement. The motion carried unanimously. Dr. Minsk will be offered the opportunity to argue her case at a hearing before the Board.

REVIEW SAMPLE AGD TRANSCRIPT FROM DR. JEFFREY EMMI

The Board reviewed the sample transcript submitted by Dr. Emmi. Ms. Reardon stated that the Board's Administrative Specialist, Ms. Howard, had a number of issues with the sample transcript and noted them for the Board's consideration. The points of consideration were as follows:

- 1) The Board previously requested that each page of the transcript include the licensee's name, license number, or other identifier. The sample transcript submitted included a header on each page that stated the licensee's name. As Ms. Howard pointed out at the May 11<sup>th</sup> meeting, the header may or may not print on each page, depending on printer settings. Ms. Howard's printed version did not print the header based on her print settings. However, Ms. Reardon's version did print the header, based on her print settings. Ms. Reardon stated that this issue could be resolved if AGD took the information out of the header and placed it within the body of each page, so that it would print regardless of individual printer settings.
- 2) Ms. Reardon pointed out several items on the sample transcript where the information provided must be kept up to date by AGD, i.e. renewal date, required number of CE hours, and required subjects. Ms. Reardon also noted that the Board currently has a requirement of 2.0 CEUs in infection control, which is not listed under the *Required Subjects* section of the transcript. Dr. Director questioned, and Ms. Reardon confirmed, that the infection control CE requirement has already been published in the Board's Rules and Regulations, and the transcript data was not updated accordingly. Based on this information, Dr. Director stated his opinion that the Board cannot rely on AGD to keep up with all of the changes to its Rules and Regulations relative to continuing education. Ms. Bruhl pointed out that the sample transcript being reviewed was for the previous licensure period, which did not require CEUs in infection control.
- 3) The Board previously requested that the statement, "You meet all state requirements!" be removed from the transcript. The sample transcript reviewed at the meeting still included the statement.

Ms. Reardon stated that Dr. Jones had invited Dr. Cole of AGD to attend the meeting, but he responded to the invitation with his regrets and offered to attend the July 19<sup>th</sup> meeting at 4:00 pm instead. Dr. Director stated that Dr. Emmi had offered to attend the meeting, but Dr. Director did not think his attendance would be necessary. Dr. Director stated that he believes the AGD is doing a good service for the dentists, but he does not believe "we are there yet". Ms. Reardon continued with Ms. Howard's list of issues for the Board's consideration:

- 4) On the right-hand side of the first page of the sample transcript, AGD has added a lengthy disclaimer under the heading, "Important!". The disclaimer specifically lists three of the Board's CE requirements, but not all of them. Ms. Howard and Ms. Reardon agreed that the second, third and fourth paragraphs should be stricken from the disclaimer, leaving the first paragraph beginning with "It is the individual dentist's responsibility...", followed by the last paragraph beginning with "For more information...". Ms. Reardon also suggested that the statement beginning with "Your licensing board has the final say..." should be in bold font.
- 5) Ms. Howard and Ms. Reardon agree that the columns titled "Meet requirement?" should be deleted from the transcript, as AGD does not have the credentialing/auditing authority to determine whether or not the Board's continuing education requirements have been satisfied.

Dr. Director made a motion, seconded by Ms. Madden, to send a letter to Dr. Emmi of AGD summarizing the issues listed above. The motion carried unanimously. Per Dr. Jones' request, the letter will be copied to Dr. Cole of AGD.

#### DISCUSSION REGARDING EXPIRATION TERM OF CLINICAL EXAM SCORES – MS. REARDON

Ms. Reardon summarized 24 Del.C. §1126(d), stating that if a licensee fails to renew a license over a period of more than 5 years AND has not been in practice in another state during the previous 5 years, then the licensee must apply as a new applicant and submit to re-examination. Ms. Reardon recommended that the Board consider a statutory amendment limiting the validity of exam scores to 5 years from the date of an exam. Dr. Director proposed to amend 24 Del.C. §1123(b) to read as follows: "An applicant applying for licensure shall, within 5 years of the date of such application...". Ms. Reardon pointed out that there may be some amendments to Section 1123 in the current legislative session that may change the placement of Dr. Director's proposed wording. Ms. Reardon advised that based on the Board's statute as currently written, there is no way to carve out a rule or regulation limiting a time period for the validity of exam scores. The Board will propose a statutory amendment for the 147<sup>th</sup> legislative session.

#### 4:00 P.M., DR. LARRY GIORDANO, ANESTHESIA ADVISORY COMMITTEE

The Board recognized Dr. Larry Giordano of the Anesthesia Advisory Committee, and Dr. Giordano expressed his appreciation for the opportunity to address the Board. Dr. Giordano stated that he had worked with State Prosecutor, Bill Sudell, a few months ago on a dental anesthesia complaint. Dr. Giordano stated that it took a lot of explanation for Mr. Sudell to understand the issues of the complaint. As a result, Dr. Giordano surmised that it would be a good idea to explain to the Board its history of anesthesia regulations. Dr. Giordano stated that during the late 1980s, a national television news show presented a report about a patient who died in a dental office. The news report prompted local oral surgeons to investigate its state regulations governing anesthesia, which they discovered did not exist. Dr. Giordano stated that the Board at that time wanted to initiate something that would protect the public, while at the same time protect the profession's privilege of being able to administer anesthesia. Dr. Giordano stated that it took him eight years to write the State's regulations governing anesthesia, with assistance from the Delaware State Dental Society, local practitioners, model legislation from other states, the American Association of Oral and Maxillofacial Surgery, the Delaware Board of Dental Examiners, and the Attorney General's Office. Dr. Giordano reported statistical data for Oral Surgeons (not dentists) who administer anesthesia, and stated that Delaware promulgated regulations governing anesthesia sometime around 1990. Dr. Giordano posed the question, how do you measure degrees of sedation and what levels of education are required to provide those varying degrees? Dr. Giordano stated that the Board's definitions of the varying degrees of sedation are well-known and nationally recognized, and were developed in conjunction with the American Society of Anesthesiologists, the American Dental Association, oral surgery and other organizations. The definitions do not regulate specific drugs and how they're used, but rather define the effect that is achieved. Dr. Giordano summarized the purpose of each of the Board's anesthesia permit types, and the education and inspection requirements for each type: Restricted Permit II, Restricted Permit I, and Unrestricted Permit. Dr. Giordano reported that in 2005, the Board amended its regulations governing anesthesia to require a re-inspection every six years for holders of Restricted I and Unrestricted Permits, and also increased the number of required continuing education credits. Dr. Giordano stated that some dentists choose to hire a licensed anesthesiologist to administer anesthesia. The Board questioned Dr. Giordano and he responded. Dr. Giordano stated his opinion that anyone applying for an anesthesia permit should receive a copy of the Board's regulations governing anesthesia.

#### DISCUSSION REGARDING RESTRICTED PERMIT I – DR. DIRECTOR

While Dr. Giordano was still present, Dr. Director moved to this agenda item. Dr. Director stated that there was some discussion about amending the Rules and Regulations due to questions that came up regarding the intent of a Restricted Permit I. Currently, the Board's Rules and Regulations do not permit the holder of a Restricted Permit I to administer nitrous oxide. Dr. Director stated that he did not believe that was the intent when the Rules were written, but rather an oversight. Dr. Director presented a draft of proposed Rule changes for consideration by the Board and Dr. Giordano. Dr. Giordano stated that he understood Dr. Director's point, and that the concept for the Restricted Permit I is that it allows for conscious sedation. Dr. Giordano added that Dr. Director's recommendation of stating that a Restricted

Permit I indeed allows the holder to induce conscious sedation specifically by way of nitrous oxide inhalation would provide clarification. Dr. Director noted that the Board's website currently states that a holder of a Restricted Permit I is not allowed to induce conscious sedation by nitrous oxide inhalation. Dr. Giordano added that the absence of nitrous oxide inhalation was an oversight in the regulation language for the Restricted Permit I as well as the Unrestricted Permit. Dr. Director stated that Board members were made aware of the oversight by Medicaid who recently questioned the Board's Rules and Regulations governing anesthesia.

Dr. Giordano expressed his concern about the idea of achieving moderate conscious sedation by P.O. drugs (drugs given by mouth). Dr. Giordano added that some other states offer another permit type to allow this kind of anesthesia. Dr. Giordano and the Anesthesia Advisory Committee are against adding another permit type for anesthesia by P.O. drugs. He added that if a dentist wants to consciously sedate a patient (by whatever means) then the dentist needs to know how to manage an airway and meet the requirements for a Restricted Permit I. The Board thanked Dr. Giordano for attending the meeting and commenting on Dr. Director's proposal.

Later in the meeting, Dr. Director stated his opinion that the wording of the Rules and Regulations governing anesthesia may need to be changed in the future. In order to address the current issue before the Board, Dr. Director made a motion, seconded by Dr. Lenz, to approve the proposed anesthesia regulation changes as written. The motion carried unanimously. Ms. Reardon will present a strikeout draft for the Board's review, and asked that the Board take a good look at its Regulations in order to propose any additional changes at its next meeting.

#### DISCUSSION REGARDING THE DUTY OF HEALTH PROFESSIONALS TO REPORT NEGLECT OF CARE – MS. REARDON

Ms. Reardon distributed copies of excerpts from 16 Del.C. §902(1) and (13), 903, 909 and 914(a) and (b), as well as 10 Del.C. §901(1) and (18) for the Board's information. Ms. Reardon presented this information to the Board as a result of Dr. Lenz' inquiry at the last meeting regarding the definition of *neglect of care* from a dental perspective. Ms. Reardon summarized the information for the Board, and advised that in some respects determining "neglect" will be a subjective judgment call on the part of the doctor who is treating the patient. Ms. Reardon added that the doctor should make an analysis considering who the child's custodian is, whether or not they have the means to support the child, and if the situation in question rises to the level that they are not providing necessary dental healthcare for the child. Dr. Director questioned whether it would be a good idea to send a copy of the statute governing neglect of care to the state dental and dental hygiene societies for distribution among its memberships. Ms. Reardon suggested that if the Board wants to communicate the information to the state organizations, it send a letter which could include the definition of neglect of care and links to statutory references for more information. Ms. Reardon stated that health professionals have immunity for making a good faith report, and that any communication to the state organizations may want to include a link to that statutory reference as well. Dr. Director recommended that the information be disseminated to all dentists and hygienists in Delaware, and he believes the majority of those dentists and hygienists can be contacted through the state dental and dental hygiene societies. Ms. Reardon will draft a letter for the Board's review at its July meeting.

#### **NEW BUSINESS**

##### RATIFICATION OF LICENSES/PERMITS ISSUED BY DPR SINCE LAST BOARD MEETING

###### Dental Hygienist

###### Shelley A. Mikkelsen

Dr. Lenz made a motion, seconded by Dr. McAneny, to ratify the dental hygienist licensure of Shelley A. Mikkelsen. The motion carried unanimously.

#### REVIEW OF APPLICATIONS FOR LICENSURE

Dr. Director made a motion, seconded by Dr. McAneny, to amend the agenda to add review of the application for licensure of Harry Yu He. The motion to amend the agenda carried unanimously.

##### Dentist

##### Harry Yu He

Dr. Jones reviewed the application. Dr. McAneny made a motion, seconded by Ms. Calicott-Trawick, to approve the dentist licensure of Harry Yu He. The motion carried by a majority vote, with Dr. Director opposed.

#### **COMPLAINT STATUS & CONSENT AGREEMENTS**

##### REVIEW COMPLAINT STATUSES

Complaint 09-14-10 (Director) Closed by Investigator

Complaint 09-15-10 (Lenz) Closed by Investigator

Complaint 09-21-10 (Jones) Closed by Investigator

Complaint 09-08-12 Assigned to Ms. Madden and Forwarded to AG's Office

Complaint 09-16-11 (Director) Forwarded to AG's Office

Complaint 09-10-12 Assigned to Dr. Jones

Dr. Jones reported the statuses of the above listed complaints.

##### CONSENT AGREEMENTS

Complaint 09-08-12 Review Consent Agreement (Ms. Madden recused)

Ms. Reardon summarized the Consent Agreement for the Board. After discussion, Dr. Director made a motion, seconded by Dr. McAneny, to accept the Consent Agreement as presented. The motion carried by a majority, with Ms. Madden recused from the vote. Ms. Reardon circulated the Order for signatures.

Dr. Jones and the Board thanked the public members for their assistance during the May 2012 clinical exams. Dr. Director and the Board thanked the members of the Hygiene Advisory Committee for their assistance.

Mr. Gibbs left the meeting at 5:11 p.m.

#### **CORRESPONDENCE** - None

#### **OTHER BUSINESS BEFORE THE BOARD (for discussion only)**

##### MEETING ATTENDANCE

Dr. Jones stated that he has noticed a decrease in the attendance at Board meetings. Dr. Jones asked that all members take the meetings seriously and recommended that everyone reevaluate their personal lives to determine if the meetings are a priority. He added that the Board needs everyone's input at the meetings.

Ms. Madden asked for confirmation that the Board is scheduled to meet in July, August and October. Ms. Reardon stated that once the Board meets its minimum requirement for meetings, it is possible to deter from the meeting schedule, assuming that meeting cancellations are noticed to the public. The Board will consider cancelling its August 2012 meeting, contingent upon whether or not there is Board business to discuss in August.

#### **PUBLIC COMMENT**

An unidentified member of the public addressed the Board. She stated that she was an exam candidate whose score was read aloud earlier in the meeting. She added that she has completed the application process and questioned when she could get licensed. Ms. Reardon responded that if everything is in order, the application would be administratively processed by the Division and it would not need to wait for Board review in July.

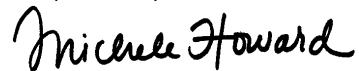
**NEXT MEETING**

The next Board meeting will be **Thursday, July 19, 2012 at 3:00 p.m.** in Conference Room A located on the second floor of the Cannon Building at 861 Silver Lake Boulevard, Dover, Delaware.

**ADJOURNMENT**

There being no further business to discuss, Cheryl Calicott-Trawick made a motion, seconded by Dr. McAneny, to adjourn the meeting at 5:20 p.m. The motion to adjourn carried unanimously.

Respectfully Submitted,

A handwritten signature in black ink that reads "Michele Howard". The signature is written in a cursive, flowing style.

Michele Howard  
Administrative Specialist II

*The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.*